IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

OP.No. 38018 of 2002(A)

PETITIONER:

SALIM KUMAR S/O.LATE THANKAPPAN VAIDYAN,
PANCHERIL HOUSE, OLASEEA KOTTAYAM.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS:
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1. A.V.VASAVAN, IKKARANALPATHIL,
KILIROOR NORTH PO, KOTTAYAM.

2. THE LABOUR COURT, ERNAKULAM.

BY ADV. SRI.W.MURALIDHARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

O.P. No. 38018 OF 2002 A

Dated this the 21st day of December, 2006

J U D G M E N T

The petitioner is the legal heir of the management in I.D. No.138/95 before the Labour Court, Ernakulam. The issue referred for adjudication was,

> " *Whether the alleged denial of employment to Sri.A.V.Vassavan from February 1995 is justifiable? If not, the relief which the workman is entitled to?"*

The 1st respondent herein claimed that he was a workman under the management and was denied employment from 20.2.1995. The contention of the workman is that he joined as an employee of the management in October 1957 and he was denied employment with effect from 20.2.1995. The contention of the management was of total denial. However, the Labour court found that earlier also the workman was denied employment, which resulted in a conciliation settlement signed before the Assistant Labour Officer on 18.8.1994, by which the workman was reinstated by enhancing his pay to Rs.40/- per day with effect from 1.9.1990. In view of the said finding as also the other evidence before it, the Labour court found that the 1st respondent

workman was illegally denied employment and, therefore, he is entitled to be reinstated with full back wages with effect from 20.2.1995. Since in the meantime the management had already died, the petitioner herein, who was the son of the deceased management had been impleaded as additional 3rd respondent in the I.D. The Labour court directed the petitioner to reinstate the workman, within two months and to pay full back wages at the rate of Rs.1,000/- per month with effect from 20.2.1995. The petitioner contends that on the death of the father, who was the management in the I.D., the establishment became defunct and the petitioner has been evicted from the building housing the establishment which was on lease, by the land lord. Therefore, that establishment is no longer in existence and, therefore, if at all, the 1st respondent would only be entitled to closure compensation at the most assuming that the award is liable to be upheld. He also strenuously contends against the finding of the Labour court regarding the status of the workman and finding of denial of employment to the 1st respondent.

2. Although the 1st respondent has entered appearance through counsel, the counsel was not present when the matter was taken up for hearing. Therefore, counsel for the petitioner was heard.

3. In so far as there was specific finding to the effect that there was an earlier denial of employment in respect of which the management of the workman had entered into a conciliation settlement

on 18.8.1994, which was categorically proved by summoning the files of the Labour Officer, I do not think that the petitioner can be heard to contend that the workman was not employed by the management at all. Further, I do not find anything perverse in the findings of the Labour court that the 1st respondent workman was in fact denied employment with effect from 20.2.1995. However, it is a fact that the management, who was the father of the petitioner, died on 17.12.1996. He has also categorically stated that thereafter he had to surrender the vacant possession of the premises to the land lord. The petitioner's contention is that he did not continue that business, which was treatment of children and he is now only selling medicines manufactured by other companies and does not manufacture medicines by himself. Therefore, the service of the workman is not at all required. The 1st respondent has not cared even to file a counter affidavit to rebut these specific allegations nor to be present through counsel at the time of hearing. In the above circumstances, although I am not inclined to interfere with the findings regarding denial of employment to the 1st respondent workman, I feel that in the interests of justice, the relief should be granted to the 1st respondent as if the establishment was closed on the date of death of the management namely, 17.12.1996. I take the total service of the petitioner as 40 years for this purpose and if benefits are given to the workman on the premises that the establishment was closed in 1996, he

would be entitled to 40 months' wages as closure compensation and gratuity. Since the Labour court had fixed the wages of the 1st respondent workman as Rs.1,000/- per month, this would work out to roughly Rs.40,000/-. Accordingly, I direct the petitioner to pay to the 1st respondent workman Rs.40,000/-, within two months from the date of receipt of a copy of this judgment in full and final satisfaction of the direction in the impugned award. If the amount is not so paid within the said period the petitioner would also pay interest on the amount at the rate of 10% per annum from 17.1.1996 till date of payment.

The original petition is disposed of as above.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.38018/02 A

J U D G M E N T

21st December, 2006